STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 29, 2002
v	No. 238257 Oakland Circuit Court
KEITH DARNELL HOLLIMAN, Defendant-Appellant.	LC No. 2000-172631-FH

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a plea-based conviction of attempted first-degree home invasion, MCL 750.92; MCL 750.110a(2), for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to four to twenty years in prison. We remand for additional proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that his plea was not understanding and voluntary. A guilty plea must be understanding, voluntary, and accurate. MCR 6.302(A). It is understanding if the defendant is advised of and understands the rights set forth in MCR 6.302(B). It is voluntary if the terms of any plea agreement are disclosed and the plea is defendant's own choice, i.e., it is not tendered under threat or duress. MCR 6.302(C).

The record clearly establishes that defendant was properly advised of his rights in connection with the pleas and defendant does not contend otherwise. However, he does contend that he was not advised of the collateral consequences of his plea, i.e., the effect a plea to multiple offenses would have on the scoring of the guidelines and on future decisions to be made by the department of corrections. While a guilty plea must be made "with knowledge of the consequences," *People v Schluter*, 204 Mich App 60, 66; 514 NW2d 489 (1994), "the trial judge need not inform the defendant of all sentence consequences—only the maximum sentence for the crime to which he was pleading guilty," *People v Jahner*, 433 Mich 490, 502; 446 NW2d 490 (1989), and any mandatory minimum sentence required by law. MCR 6.302(B)(2).

Thus, the court is not required to advise the defendant of potential sentencing consequences, *People v Johnson*, 413 Mich 487, 490; 320 NW2d 876 (1982), and there is "no authority that holds collateral consequences should be considered in allowing a defendant to withdraw his guilty plea after having been sentenced." *People v Davidovich*, 238 Mich App 422,

430; 606 NW2d 387 (1999), aff'd 463 Mich 446 (2000). In addition, there is nothing in the record, including the transcript of the plea proceedings and the affidavit filed in support of the motion to withdraw the plea, to indicate that defense counsel gave defendant faulty advice regarding the plea. To the contrary, defendant stated on the record and under oath that he was satisfied with his attorney's advice. Therefore, defendant failed to establish that his plea was not understandingly made.

Defendant also claims that his plea was not voluntary because (1) he confused this offense with another offense, (2) his attorney pressured him into pleading guilty, and (3) circumstances pressured him into pleading guilty.

There is nothing in the record to support defendant's first allegation. The transcript from the plea proceeding showed that the court advised defendant that he was facing one charge of first-degree home invasion and another charge of second-degree home invasion, the two charges were differentiated by their cases numbers, and the completed offense was further differentiated from this case by the name and address of the homeowner. Nor does the record support defendant's other allegations.[1] To the contrary, defendant stated under oath that it was his own choice to plead guilty and that no one had made any promises or threats or used coercion to induce him to plead guilty. Under such circumstances, defendant is held to his record denial. *People v Weir*, 111 Mich App 360, 361; 314 NW2d 621 (1981).

Although we find that defendant's plea was understandingly and voluntarily made, we agree with defendant that the trial court failed to elicit a sufficient factual basis for the plea.

The elements of first-degree home invasion are (1) that the defendant (a) broke and entered a dwelling or (b) entered a dwelling without permission, (2) that when the defendant broke and entered the dwelling or entered without permission, he intended to commit a felony, larceny, or assault therein, and (3) when the defendant entered, was present in, or was leaving the dwelling, (a) he was armed with a dangerous weapon, or (b) another person was lawfully in the dwelling. MCL 750.110a(2); CJI2d 25.2a; CJI2d 25.2c. An attempt "consists of (1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense." *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001). The defendant must "inten[d] to do an act or to bring about certain consequences which would in law amount to a crime" and must do an act in furtherance of that intent, which act goes beyond mere preparation. *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). Such an act "consists of some direct movement toward commission of the crime that would lead immediately to the completion of the crime." *Id*.

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[1] We find no error in the trial court's denial of defendant's motion to enlarge the record to provide evidence allegedly supporting his claim of duress. While MCR 7.208(C) allows the trial court to make corrections to the record; it does not allow a party to expand the record for purposes of appeal. A party cannot enlarge the record by presenting evidence that was not submitted to and considered by the trial court in rendering the decision that is the subject of the appeal unless this Court grants such relief by proper motion under MCR 7.216(A)(4). *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 579-580; 609 NW2d 593 (2000), aff'd sub nom *Byrne v Michigan*, 463 Mich 652 (2001); *Coburn v Coburn*, 230 Mich App 118, 122; 583 NW2d 490 (1998), rev'd on other grounds 459 Mich 874-875 (1998).

At the plea proceeding, defendant essentially stated that he was guilty of attempted first-degree home invasion because he attempted to enter a dwelling. However, the trial court did not elicit any facts to show that the attempted entry, if completed, would have constituted a first-degree home invasion. While one might infer from the fact that defendant tried to enter someone else's house that he didn't have permission to enter, there were no facts regarding the attempted entry from which an intent to commit a larceny could be inferred, see *People v Hughes*, 27 Mich App 221, 222; 183 NW2d 383 (1970), or to show that defendant was armed or the resident was at home, the element distinguishing first-degree home invasion from second-degree home invasion. Therefore, the facts elicited on the record were insufficient to enable the trier of fact to convict defendant of the crime charged. *People v Brownfield (After Remand)*, 216 Mich App 429, 431; 548 NW2d 248 (1996).

Because the defendant substantially admitted his guilt but neither admitted nor denied an element or elements of the crime charged due to oversight, the case should be remanded to allow the prosecutor to establish the missing elements. If the prosecutor is able to do so and there is no contrary evidence, defendant's conviction should not be disturbed. If the prosecutor is unable to do so, the trial court must set aside the conviction. If there is conflicting evidence, the defendant shall be allowed to withdraw his plea and proceed to trial. *People v Mitchell*, 431 Mich 744, 750; 432 NW2d 715 (1988); *People v Kedo*, 108 Mich App 310, 314; 310 NW2d 224 (1981).

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra